

**Matter of Carey**  
**Del. Supr. No. 137, 2002 (7/16/02)**  
**Board Case No. 16, 2001**

**Disciplinary Rules Involved:**     DLRPC 1.15(a), 1.15(f), 8.4(c)

**Sanctions Imposed:**                     Disbarment

By Decision of the Delaware Supreme Court dated July 16, 2002, Robert E. Carey, admitted in 1991, (not Robert G. Carey, admitted in 1967), was disbarred from membership in the Delaware Bar. On May 1, 2001, a Consensual Petition for Interim Suspension was filed by the Office of Disciplinary Counsel (“ODC”) and Carey’s attorney, Charles Slanina, Esquire, of Tybout, Redfearn & Pell, on the grounds that Carey had converted client escrow funds to his own use. Carey was suspended on May 3, 2001, pending final disposition of all attorney disciplinary proceedings. By Order of the Court of Chancery, also dated May 3, 2001, Cathy L. Reese, Esquire, an attorney with the law firm of Blank Rome Comisky & McCauley LLP, was appointed as receiver for Carey’s law practice.

The Board on Professional Responsibility and the Supreme Court accepted Carey’s admissions to: (1) misappropriation of client funds, in an amount in excess of \$100,000, for his personal use, in violation of the Delaware Lawyers’ Rule of Professional Conduct (“DLRPC”) 1.15(a), which provides that a lawyer shall identify and appropriately safeguard client funds; (2) failure to establish a separate interest-bearing account for the net proceeds of the sale of the Miller Estate house, in the amount of \$95,950.71, for the period beginning August 28, 1998, in violation of DLRPC 1.15(f), which provides that a lawyer holding client funds must act reasonably to place funds into an interest-bearing account for the benefit of the client; and (3) misappropriation of client funds, in an amount in excess of \$100,000, in violation of DLRPC 8.4(c), which provides that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

In mid-April 2001, Carey had contacted the Lawyers’ Assistance Program with the intention of taking action to rectify the situation caused by his intentional ethical misconduct.

Carey and his counsel met with Chief Counsel of the ODC to voluntarily report the misconduct, and then subsequently notified the Delaware Attorney General’s office. Carey closed his law practice, transferred all active client files to substitute counsel, and turned over all operating and escrow account records to the Receiver. He has initiated efforts to make restitution for the misappropriated funds.

The Court considered as an aggravating factor that Carey had acted with a

dishonest or selfish motive. In mitigation, the Court considered that Carey has no prior disciplinary record, he presented evidence of personal and emotional problems, he has made timely good faith efforts to make restitution and to rectify the consequences of his misconduct, he has fully and freely disclosed his misconduct and fully cooperated with the ODC and the Board, and he has expressed remorse.

While acknowledging that the evidence of Carey's personal and emotional problems was compelling and explained the circumstances that led to his defalcations, the Court found that "those problems do not justify or reduce the seriousness of his criminal misconduct. In every prior Delaware disciplinary matter in which an attorney has intentionally misappropriated client funds, the attorney has been disbarred. Any sanction other than disbarment would not provide the necessary protection for the public, or serve as a deterrent to the legal professional or preserve the public's trust and confidence in the integrity of the Delaware lawyers' disciplinary process."